[2025] 2 S.C.R. 1969 : 2025 INSC 249

Jitender @ Kalla
v.
State (Govt of NCT of Delhi) & Ors.

(Criminal Appeal No. 865 of 2025)

20 February 2025

[Abhay S. Oka* and Augustine George Masih, JJ]

Issue for Consideration

I. Whether the Supreme Court decisions in *Indira Jaising v. Supreme Court of India (I) and (II),* which lay down the guidelines for the designation of senior advocates, require reconsideration.

II. Whether an advocate on record is guilty of misconduct by merely lending his name to petition without further participation in the proceedings of the case.

Headnotes†

The appellant was convicted and sentenced to thirty years of rigorous imprisonment without the right to seek remission until the sentence was complete, a punishment restored by the Supreme Court in an earlier judgment – The present Special Leave Petition (SLP) was filed by the appellant challenging a High Court order passed in a separate and unconnected case concerning another convict – While filing the SLP, the appellant suppressed the material fact that his sentence was for a fixed term of thirty years without remission, leading the Court to initially proceed on the footing of a simple life sentence – Application was filed by the informant pointing out the suppression of material fact – Apex court sought explanation from *Shri Jaydeep Pati,* AOR and *Shri Rishi Malhotra,* Advocate (later designated as Senior Advocate) and refer the issue of designation of Senior Advocate to Hon'ble Chief Justice of India to consider. [Paras 1-9, 44, 45]

The decisions of this Court in the case of *Indira Jaising-I* and *Indira Jaising-II,* which lay down the guidelines for designation of senior advocates by this Court and High Courts across the country under the 1961 Act, need reconsideration – Our views

* Author

need to be placed before the Hon'ble Chief Justice of India to enable him to consider whether the issues decided in the two decisions in the case of *Indira Jaising* need reconsideration by a larger Bench:

Held: In *Indira Jaising-I,* this Court dealt with the challenge in a petition under Article 32 of the Constitution of India, *inter alia,* to the system of designation of senior advocates followed by various High Courts, including the method of secret ballot – This Court considered the practices followed in various other nations and various High Courts in India – Thereafter, this Court proceeded to lay down mandatory guidelines which would cover the exercise of designation of senior advocates by this Court and all the High Courts – A direction was given to modify the norms/guidelines in existence so as to be in accord with the directions – In *Indira Jaising-II,* this Court reconsidered some of the directions issued in *Indira Jaising-I* – This Court considered the issues of voting by secret ballot, cut-off marks, and points assigned for publication – This Court also considered the aspect of personal interview and other general aspects – The mandatory guidelines have been laid down by this Court in the case of *Indira Jaising-I* in the exercise of powers under Article 142 of the Constitution of India – However, paragraph 74 of the decision indicates that this Court was of the view that the guidelines may require reconsideration in the light of the experience to be gained over a period of time – Even the decision in the case of *Indira Jaising-II* in paragraph 51 records that the process of improvement of the guidelines is a continuous one, as we learn from every experience – We are conscious of the fact that both the decisions in the case of *Indira Jaising* are by a Bench of three Hon'ble Judges and we are respectfully bound by the said decisions – Neither can we disagree with the two binding decisions nor can we take a contrary view – However, all that we are doing is expressing a few serious doubts and concerns – We propose to direct that this issue be placed before the Hon'ble Chief Justice of India to consider whether the issue needs to be reconsidered by a Bench of appropriate strength – This exercise will be within the four corners of what is held by the Constitution Bench in the case of the Central Board of Dawoodi Bohra Community and Anr. there is one more reason why we are undertaking this exercise – Both the decisions lay down that making such modifications and improvements will be a continuous exercise – For the reasons we have recorded hereafter, our views need to be placed before the

Hon'ble Chief Justice of India to enable him to consider whether the issues decided in the two decisions in the case of *Indira Jaising* need reconsideration by a larger Bench. [Paras 30, 33, 34, 36, 40]

An advocate-on-record of this Court is bound to maintain a much higher standard of professional conduct than any other advocate – It is only through an advocate-on-record that a litigant can seek justice from this Court unless he wants to appear in person – Therefore, the role of an advocate-on-record is very crucial – Unless he maintains a high standard of conduct, he will be of no assistance to this Court – The standard of conduct of an advocate-on-record always ought to be higher than the conduct of any other advocate who is not an advocate on record – Every advocate-on-record must render effective service so that a common man can access remedies before this Court – In case any advocate-on-record commits misconduct or is guilty of conduct unbecoming of an advocate-on-record, an action against him as per Rule 10 of Order IV is warranted:

Held: When a petition/appeal/counter-affidavit is not drafted by the advocate-on-record, the advocate-on-record who files it is entirely and wholly responsible to this Court – Therefore, when an advocate-on-record receives a draft of a petition/appeal/counter-affidavits from any other advocate, it is his duty to go through the case papers and, thereafter, to carefully go through the petition/appeal/counter-affidavits to ascertain whether correct facts have been stated in the draft and whether all relevant documents are annexed to the petition/appeal/counter-affidavits – After reading the case papers, if he has any doubt, he must get the doubt clarified either by contacting the client or his local advocate – He is responsible for ensuring that he gets correct factual instructions so that there is no suppression of facts while filing petitions/appeals/counter-affidavits – An advocate-on-record is answerable to this Court since he has a unique position under the 2013 Rules – Therefore, when incorrect facts are stated in the petition/appeal/counter-affidavits or when material facts or documents are suppressed, the advocate-on-record cannot shift the entire blame on either the client or his instructing advocates – Therefore, it is his duty to be cautious and careful – If advocates-on-record start merely lending their names to petitions/appeals/counter-affidavits drafted by somebody else, the very purpose of setting up the institution of advocates on-record

will be frustrated – The duty of the advocate-on-record does not end after filing a case or a counter – Even if the counsel appointed by him is not present, he must be ready with the case on law and facts and effectively assist the Court – If advocates-on-record start behaving irresponsibly and start merely lending their names while filing petitions/appeals/counter-affidavits, it may have a direct impact on the quality of justice rendered by this Court – Therefore, in case any advocate-on-record commits misconduct or is guilty of conduct unbecoming of an advocate-on-record, an action against him as per Rule 10 of Order IV is warranted. [Paras 22-25, 44]

Case Law Cited

Indira Jaising v. Supreme Court of India (I) **[2017] 10 SCR 478 : (2017) 9 SCC 766;** *Indira Jaising v. Supreme Court of India (II)* **[2023] 5 SCR 434 : (2023) 8 SCC 1 – distinguished.**

Jitendra @ Kalia v. State of Govt. of NCT of Delhi **[2018] 12 SCR 622 : (2019) 13 SCC 691;** *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharastra and Anr.* **[2004] Supp. 6 SCR 1054 : (2005) 2 SCC 673 – relied on.**

Amar Vivek Aggrawal v. High Court of Punjab & Haryana and Ors. **(2022) 7 SCC 439;** *Aligarh Muslim University v. Naresh Agrawal & Ors.,* **2024 INSC 856 : [2024] 11 SCR 1647 – referred to.**

List of Acts

Advocates Act 1961; Constitution of India; Supreme Court Rules, 2013.

List of Keywords

Advocate on Record; Senior Advocate; Advocate; Convict; Duty; Conduct.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 865 of 2025

From the Judgment and Order dated 08.01.2024 of the High Court of Delhi at New Delhi in WPCRL No. 72 of 2024

With

Writ Petition (Crl.) No. 418 of 2024

Appearances for Parties

Dr. S. Muralidhar, Amicus Curiae/Sr. Adv., Prateek K Chadha, Ms. Ninni Susan Thomas, Ma Karthik, Maitreya Subramaniam, Ms. Pallak Bhagat, Sreekar Aechuri, Ms. Surbhi Soni, Aniket Chauhaan

Advs. for the Appellant:
Vinay Navare, Sr. Adv., L.N. Rao, Aryan Rajpal, Shivek Vyas, Shri Bhagwan, Vikash Kumar Goswami, Ashish Pandey, Prem Malhotra, Jaydip Pati.

Advs. for the Respondents:
Tushar Mehta, Solicitor General, Suryaprakash V Raju, Mrs. Aishwarya Bhati, A.S.Gs., Mohan V Katarki, Sr. Adv., Mukesh Kumar Maroria, Chitransh Sharma, Annam Venkatesh, Jagdish Chandra Solanki, Zoheb Hussain, Ms. Soumya Tandon, Vivek Gurnani, Chitvan Singhal, Mrs. Astha Singh, Ms. Shagun Thakur, Prashant Bhushan, Pranav Sachdeva, Jatin Bhardwaj, Abhay Nair, Rohit Ram, Paras Nath Singh, Shaileshwar Yadav, Rohit Kumar, Ms. Bhumika Choksey, Shailendra Singh, Ms. Radhika Mahopatra, Antariksh Singh, Anilendra Pandey, Varun Thakur, Hemant Kumar Chaturvedi, Rajeev Kumar Ranjan, Ms. Priya Kashyap, Vipin Nair, Mohd Aman Alam, Mrs. M.B.Ramya, Aditya Narendranath, Mrs. Madhavi Yadav, Ahanthem Henry, Ahanthem Rohen Singh, Mohan Singh, Aniket Rajput, Ms. Khoisnam Nirmala Devi, Kumar Mihir, Vipin Nair, President, SCAORA, Amit Sharma, Vice-President, SCAORA, Nikhil Jain, Secretary, SCAORA.

Ms. Indira Jaising, Petitioner-in-person/Sr. Adv.

Judgment / Order of the Supreme Court

Order

Abhay S. Oka, J.

CRIMINAL APPEAL @ S.L.P. (Crl) No.4299 of 2024

1. Leave granted.

2. Very important issues arise in the appeal. The first issue is about the conduct of the advocate-on-record who filed the Special Leave Petition (for short, 'SLP') out of which the present appeal arises. The second

issue concerns the conduct of the advocate who appeared in this case as a counsel and was later designated as a senior advocate. Two consequential issues arise. The first consequential issue is about the need to formulate a code of conduct for the advocates-on-record. The second one is whether the decisions of this Court in the case of ***Indira Jaising v Supreme Court of India***[1] (hereafter referred to as '***Indira Jaising-I***') and ***Indira Singh v Supreme Court of India***[2] (hereafter referred as '***Indira Jaising-II***') need reconsideration. The question of taking action against the appellant for making false statements will be considered in a separate IA on which a notice has been issued.

FACTUAL ASPECTS

3. First, we are setting out a few factual aspects. The trial court convicted the appellant for the offences punishable under Sections 302 and 307 of the Indian Penal Code (for short, 'the IPC') by the judgment dated 1st July 2013. He was sentenced to undergo rigorous imprisonment for life with a direction that his case for a grant of remission shall not be considered until he undergoes a sentence of thirty years. The appellant preferred an appeal before the High Court. While confirming the conviction, the High Court was of the view that the punishment imposed on the appellant was excessive and modified the same by removing the cap of thirty years. The appellant was let off on a sentence of 16 years, 10 months already undergone. By the judgment dated 25th October 2018, in ***Jitendra @ Kalla v. State of Govt. of NCT of Delhi***[3]***,*** this Court interfered with the view taken by the High Court and restored the order of sentence of the trial court. This Court held that the appellant's sentence shall be thirty years of rigorous imprisonment and that the appellant shall have no right to seek remission till he completes the full sentence of thirty years.

4. The present appeal was filed to challenge the judgment dated 8th January 2024 passed by the Delhi High Court in a petition filed by one Rani, who was sentenced to undergo life imprisonment in an unconnected case. The petitioner therein applied for premature release. As the application was not considered, a prayer was made in

1 (2017) 9 SCC 766

2 (2023) 8 SCC 1

3 (2019) 13 SCC 691

the Writ Petition before the High Court seeking a writ of mandamus, directing the 1st respondent – State Government, to consider her case for premature release under the Government Policy dated 16th July 2004. A copy of the order dated 30th June 2023 was placed on record by which the prayer of the petitioner in the said writ petition before the High Court was rejected by the State Government. The High Court, while setting aside the order dated 30th June 2023, directed reconsideration of the petitioner–Rani's case and granted her time of two months to surrender.

5. Though the present appellant was not a party to the petition in which the impugned order was passed, strangely, he challenged the said order. It is an admitted position that while filing the SLP, which is the subject matter of this criminal appeal, the appellant did not disclose that he was directed to undergo imprisonment for thirty years without remission. Therefore, this Court proceeded on the footing that it was a case of a simple life sentence.

6. On 19th March 2024, Shri Rishi Malhotra, advocate, and Shri Jaydip Pati, advocate-on-record, appeared. Along with the present appeal, other SLPs were listed. Therefore, there was a common order passed directing notice to be issued returnable on 19th April 2024. In the meanwhile, since the present appellant was on furlough, an exemption was granted to the present appellant from surrendering. The order dated 19th March 2024 reads thus:

> "Applications seeking exemption from filing a certified copy of the impugned order are allowed. Applications seeking permission to file the Special Leave Petitions are allowed.
>
> Issue notice, returnable on 19th April, 2024.
>
> Liberty is granted to serve the Standing Counsel for the respondent-State, in addition.
>
> To be heard along with SLP (Crl.) No.3497/2024 (@ Diary No.9321/2024).
>
> In the meantime, as the petitioners are on furlough, we grant exemption to them from surrendering."

7. We may note here that on 29th April 2024, IA No.105306 of 2024 and IA No.104520 of 2024 were filed for intervention and recall of

the order dated 19th March 2024, respectively. The applications were made by the 1st informant in the case. In the application, it was pointed out that there was suppression of material facts about the fixed-term sentence of thirty years imposed on the appellant. Another fact pointed out was that the appellant had not approached the High Court and he had directly approached the Supreme Court by purportedly challenging the order passed in a writ petition filed by some other accused. After the said applications were served on the appellant, on 9th May 2024, the advocate-on-record for the appellant mentioned the case at 10.30 a.m. and prayed for permission to withdraw the SLP. He had not intimated the advocate for the applicant that the matter would be mentioned for withdrawal. Therefore, while disposing of all the interim applications, this Court permitted the withdrawal of the SLP with liberty to the appellant to file appropriate proceedings before the High Court. Order dated 9th May 2024 reads thus:

> "SLP [CRL.] NO.4299/2024
>
> Taken on Board. Heard learned counsel appearing for the petitioner.
>
> The learned counsel appearing for the petitioner is not aware whether the application made by the petitioner for grant of permanent remission has been rejected. The remedy of the petitioner is to file appropriate proceedings before the High Court. Hence, we dispose of this Special Leave Petition by granting liberty to the petitioner to file appropriate proceedings before the High Court.
>
> If the petitioner is already released on furlough and he has not yet surrendered, we grant time of three weeks to the petitioner to surrender, which will enable him to file appropriate proceedings before the High Court.
>
> Applications for impleadment as well as for intervention are disposed of.
>
> Pending applications stand disposed of accordingly."

8. The fact that the application for intervention was pending was not brought to the notice of this Court. Therefore, the advocate for the applicant mentioned the matter on 17th May 2024 and pointed out

that without notice to him or his client, Miscellaneous Application No. 986 of 2024 was mentioned in the morning session and that this Court permitted the petitioner to withdraw the SLP out of which the appeal arises. Therefore, notice was issued on the said application to the appellant. By order dated 17th May 2024, the order permitting withdrawal of SLP was stayed.

9. On 11th July 2024, though this SLP was called out on two occasions, none appeared for the petitioner. This Court passed an order directing that the Registry shall issue an intimation to the advocate-on-record, calling upon the advocate-on-record to remain present on the next date. On 14th August 2024, Miscellaneous Application No.986 of 2024 seeking impleadment of the complainant as a party respondent was allowed. This Court allowed IA No.104520 of 2024 seeking recall of the order dated 19th March 2024 to the extent of prayer in clause (a). This Court noted that the petitioner in the writ petition had already surrendered. Thereafter, an order was passed on 2nd September 2024, which reads thus:

> "We have perused the Special Leave Petition and the annexures to the Application for Intervention.
>
> The Trial Court convicted the petitioner and sentenced him to undergo actual sentence of 30 years. The High Court interfered with the said order. Thereafter, this Court by a decision in Jitendra Alias Kalla vs. State (Government of NCT of Delhi)[1] restored the judgment of the Trial Court by specifically observing that the petitioner will undergo life sentence for 30 years without remission. **These facts were suppressed while filing this Special Leave Petition. Moreover, the petitioner was not a party to the petition before the Delhi High Court on which the impugned order was passed. In the synopsis, there is a specific reference to an order of conviction. However, it is not disclosed that the order of sentence was for a fixed term of 30 years. Therefore, this is a very serious and gross case of material misrepresentation made while filing the Special Leave Petition. The Advocate-on-Record for the petitioner, who filed this Special Leave Petition, owes an explanation to this Court. Therefore, the Registry to issue notice to Shri Jaydip**

Pati, Advocate-on-Record, which is made returnable on 30th September, 2024.

A copy of this order shall accompany the notice.

Shri Jaydip Pati, Advocate-on-Record, will explain his conduct by filing an affidavit."

(emphasis added)

10. Pursuant to the order, Shri Jaydip Pati, advocate-on-record, filed an affidavit dated 9th September 2024. After considering the said affidavit on 30th September 2024, this Court passed the following order:

"Mr. Jaydip Pati, Advocate-on-Record has filed an affidavit pursuant to order passed by this Court. To say the least, the contents are shocking. We will elaborately deal with the stand taken by him at an appropriate stage. In view of what is stated in the affidavit, we issue notice to Shri Rishi Malhotra, learned Senior Advocate to appear before this Court for explaining what is stated in the affidavit filed by Mr. Jaydip Pati, Advocate-on-Record.

Registry to forward copies of all orders passed in the SLP/M.A. along with a copy of affidavit filed by Mr. Jaydip Pati, Advocate-on-Record to Mr. Rishi Malhotra, learned Senior Advocate. Notice made returnable on 21st October, 2024.

Considering what is stated in the affidavit by Mr. Jaydip Pati, Advocate-on-Record and considering the fact that in recent past, this Court has noticed that at least in half a dozen cases blatant false statements were being made in the writ petitions and Special Leave Petitions filed seeking relief of premature release, we will require assistance of the President of the Supreme Court Advocates-on-Record Association (SCAORA). We request the President, SCAORA to appear and assist the Court on the next date of hearing. Copies of all the orders passed by this Court and a copy of affidavit of Mr. Jaydip Pati, Advocate-on-Record be forwarded to the President of SCAORA."

11. In terms of the said order, Shri Rishi Malhotra, advocate (who was designated as a senior advocate on 14th August 2024), filed an affidavit dated 18th October 2024. The order dated 21st October 2024 reads thus:

> "We have perused the affidavit of Mr. Rishi Malhotra, the learned senior counsel. Ms. Meenakshi Arora, the learned senior counsel representing him states that a better affidavit will be filed.
>
> We permit Mr. Rishi Malhotra, the learned senior counsel to withdraw his affidavit and to file a better affidavit.
>
> This case raises issues of great concern, insofar as the responsibility of Advocates-on Record of this Court is concerned. Apart from the dispute between a senior and his junior, as is reflected from the affidavits filed on record, the issue of concern is of the conduct of the Advocate-on-Record, especially in the light of explanation (a) to Rule 10 of Order IV of the Supreme Court Rules, 2013. A very important role has been assigned to Advocates-on-Record, as no litigant can seek redressal of his grievance before this Court without engaging an Advocate-on-Record. It is, therefore, necessary to consider of framing guidelines for the conduct of the Advocates-on-Record.
>
> The learned President of the Supreme Court Advocates-on-Record Association and the other Office Bearers are present and they have agreed to assist the Court on this aspect.
>
> For assisting the Court for framing the guidelines, we appoint Dr. S. Murlidhar, senior advocate as Amicus Curiae. It will be open for him to appoint an Advocate-on-Record of his choice to assist him.
>
> Copies of the entire proceedings including the affidavits on record shall be forwarded to the learned Amicus Curiae. It will be appropriate if the Office Bearers of the Supreme Court Advocates-on-Record Association interact with the learned Amicus Curiae so that they will be able to come out with agreed guidelines.
>
> List on 11th November, 2024."

Thereafter, another affidavit dated 30th November 2024 was filed by Shri Rishi Malhotra tendering an unconditional apology.

12. Orders passed from time to time by this Court will show that the following aspects need consideration:

    a) The role played by Shri Jaydip Pati, advocate-on-record;

    b) The role played by Shri Rishi Malhotra, senior advocate; and,

    c) The role of the appellant.

    As far as the role of the appellant is concerned, we may note here that IA No.259649 of 2024 has been filed by an intervener for initiating proceedings under Section 340 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') on which notice has been issued on 20th January 2025 and the said application has been de-tagged. Therefore, the issue of the conduct of the appellant will be examined when we consider the said application.

13. The conduct of the advocate-on-record gives rise to the issue regarding the duties and obligations of advocates-on-record and guidelines for their conduct. On this aspect, we have heard Dr S Murlidhar, learned senior counsel appearing as *amicus curiae*, Shri Vipin Nair, President of the Supreme Court Advocates-on-Record Association (for short, 'SCAORA') and Vice-President and Secretary Shri Amit Sharma and Shri Nikhil Jain respectively. We have also heard Shri Tushar Mehta, learned Solicitor General of India and lastly, Shri Vinay Navare, senior advocate representing Shri Rishi Malhotra, senior advocate.

14. The second aspect about the conduct of Shri Rishi Malhotra, senior advocate, gives rise to a contention raised by Shri Tushar Mehta, learned Solicitor General of India, appearing for Union of India, for reconsideration of earlier decisions of this Court in ***Indira Jaising-I***[1] and ***Indira Jaisingh-II***[2] and another decision in the case of ***Amar Vivek Aggarwal v. High Court of Punjab & Haryana and Ors.***[4] On these issues raised by the learned Solicitor General of India, we have also heard Ms. Indira Jaising, a senior advocate who has intervened.

4 (2022) 7 SCC 439

CONDUCT OF THE ADVOCATE ON RECORD AND HIS SENIOR

15. Firstly, we will deal with the issue of the conduct of the advocate-on-record for the appellant and the consequential question of issuing guidelines on the conduct of advocates-on-record. Before we do that, we must consider the stand taken by Shri Jaydip Pati, advocate-on-record, in his affidavit dated 9th September 2024, filed in compliance with the order of this Court dated 2nd September 2024. The stand taken in the affidavit by Shri Jaydip Pati can be summarised as follows:

    a) Shri Rishi Malhotra, the then advocate-on-record drafted eight SLPs including the present SLP, and he asked Shri Jaydip Pati to sign on those petitions as an advocate-on-record;

    b) Shri Jaydip Pati never doubted the *bona fides* of Shri Rishi Malhotra. As he was working with Shri Rishi Malhotra as his junior, he could not refuse to sign the petitions and vakalatnama as an advocate-on-record;

    c) Only after this Court issued a notice he learnt that the chamber of Shri Rishi Malhotra, while drafting the present petition, concealed the fact that this Court, in the case of ***Jitendra @ Kalla***[3], had restored the fixed-term sentence of the appellant herein, for thirty years; and,

    d) He never imagined that Shri Rishi Malhotra, in his capacity as a chamber senior, would exploit the situation by filing cases through him while concealing material facts.

    Thus, Shri Jaydip Pati stated that he filed the SLP drafted by Shri Rishi Malhotra as an advocate-on-record without even bothering to read the same.

16. Shri Rishi Malhotra filed an affidavit dated 18th October 2024, raising the following contentions:

    a) This Court appointed him as an *amicus curiae* in two cases in which the issue of permanent remission of convicts was involved;

    b) He must have filed cases on behalf of more than two hundred convicts seeking their premature release;

    c) Due to increased workload and paucity of time, he shared his workload with different chamber juniors, including Shri Jaydip Pati and Shri Utkarsh Singh;

d) He gave certain cases to Shri Jaydip Pati to file for the purpose of giving him financial benefit, and accordingly, he must have drafted at least nine cases which were filed before this Court;

e) There is no complaint made by Shri Jaydip Pati regarding other cases which were given to him and he has not stated that he signed those petitions without checking the contents;

f) Shri Jaydip Pati filed the cases given to him as per client's instructions, and the drafts of the SLPs made by Shri Pati were neither shown to him, nor discussed with him;

g) Coming to know about other cases filed by him where convicts had not fulfilled the eligibility criteria for premature release, he himself filed applications seeking withdrawal of such applications with an unconditional apology as an assurance that he would be extra careful in future matters; and,

h) The recent turn of events has affected his mental health and has brought a lot of humiliation and embarrassment to him; therefore, he has stopped taking any new remission cases.

17. Shri Rishi Malhotra then filed an application, which was affirmed on 30th November 2024, seeking permission to withdraw his earlier affidavit dated 14th November 2024. In this application, he has made a turnaround and has entirely changed his earlier stand. After he was permitted to withdraw the affidavit dated 14th November 2024, Shri Rishi Malhotra filed a fresh affidavit dated 30th November 2024. In the said affidavit, Shri Rishi Malhotra has claimed that he is a fourth-generation lawyer. What he stated in the affidavit can be summarised as follows:

a) He tendered an unconditional apology to this Court by accepting that he should have verified the SLP drafted by his chamber colleague to ensure that there were no incorrect statements. It was his moral and professional duty to oversee the work of his chamber juniors, and he was negligent in that behalf;

b) Wherever he had made wrong statements regarding the eligibility of the convicts to get a premature release, he has withdrawn all those petitions by tendering an apology;

c) He claimed that such misrepresentation by some of the Delhi convicts has occurred for the first time in his entire legal career for which he expressed regret and tendered an apology; and,

d) He stated that he had tendered an unconditional apology for stating incorrect facts in the petitions. He assured the Court that such incidents would not be repeated in the future.

18. Shri Rishi Malhotra has accepted that he should have verified the facts stated in the SLP filed by Shri Jaydip Pati. He has accepted that he was not diligent and has tendered an apology. He admitted that he has made factually incorrect statements in the petitions filed by him concerning the grant of remission, and after realising it, he has withdrawn the petitions.

DUTY OF AN ADVOCATE-ON-RECORD

19. It is necessary to examine the legal provisions. Firstly, we will deal with the provisions of the Advocates Act, 1961 (for short, 'the 1961 Act'). Under Section 16, there are two classes of advocates, namely, senior advocates and other advocates. Sections 29 and 30 are also important, which read thus:

> "29. **Advocates to be the only recognised class of persons entitled to practise law**.—Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.
>
> **30. Right of advocates to practise.—**Subject to the provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,—
>
> (*i*) in all courts including the Supreme Court;
>
> (*ii*) before any tribunal or person legally authorised to take evidence; and
>
> (*iii*) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."

Thus, every advocate within the meaning of the 1961 Act is entitled to practice in all courts throughout the territories to which the 1961 Act extends, including this Court. An exception has been carved

out to Section 30 under the Supreme Court Rules, 2013 (for short, 'the 2013 Rules'), framed by this Court in the exercise of powers under Article 145 of the Constitution of India, with the approval of the President of India. Order IV thereof deals with advocates. Rule 1 of Order IV carves out an exception. Rule 1 reads thus:

> **"1.** (*a*) Subject to the provisions of these rules an advocate whose name is entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 (25 of 1961) as amended shall be entitled to appear before the Court:
>
> Provided that an advocate whose name is entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 (25 of 1961), for less than one year, shall be entitled to mention matters in Court for the limited purpose of asking for time, date, adjournment and similar such orders, but shall not be entitled to address the Court for the purpose of any effective hearing:
>
> Provided further that the Court may, if it thinks desirable to do so for any reason, permit any person to appear and address the Court in a particular case.
>
> **(*b*) No advocate other than the Advocate-on-record for a party shall appear, plead and address the Court in a matter unless he is instructed by the advocate-on-record or permitted by the Court.**
>
> (*c*) In petitions/appeals received from jail or a matter filed by a party-in-person or where a party-in-person as respondent is not represented by an Advocate-on-Record, the Secretary General/Registrar may require the Supreme Court Legal Services Committee to assign an Advocate, who may assist the Court on behalf of such person:
>
> Provided that whenever a party wants to appear and argue the case in person, he/she shall first file an application along with the petition seeking permission to appear and argue in person. The application shall indicate reasons as to why he/she cannot engage an Advocate and wants to appear and argue in person, and if he is willing to accept an Advocate, who can be appointed for him by

> the Court. Such application shall, in the first instance, be placed before the concerned Registrar to interact with the party-in-person and give opinion by way of office report whether the party-in-person will be able to give necessary assistance to the Court for proper disposal of the matter or an Advocate may be appointed as Amicus Curiae:
>
> Provided further that whenever an advocate whose name is entered on the rolls of any State Bar Council maintained under the Advocates Act, 1961 (25 of 1961) wants to appear and argue the case in person, he shall be exempted from the requirement of interaction by the concerned Registrar.
>
> If the application is allowed by the Court then only the party-in-person will be permitted to appear and argue the case in person."
>
> (emphasis added)

Therefore, as far as this Court is concerned, an advocate other than an advocate-on-record for a party is entitled to appear, plead or address a case only if he is instructed by an advocate-on-record. Rule 5 of Order IV lays down the qualifications of an advocate to be registered as an advocate-on-record. Rules 7 and 10 of Order IV are again relevant, which read thus:

> **"7.** (*a*) An advocate-on-record shall, on his filing a memorandum of appearance on behalf of a party accompanied by a vakalatnama duly executed by the party, be entitled—
>
> (*i*) to act as well as to plead for the party in the matter and to conduct and prosecute before the Court all proceedings that may be taken in respect of the said matter or any application connected with the same or any decree or order passed therein including proceedings in taxation and applications for review; and
>
> (*ii*) to deposit and receive money on behalf of the said party.
>
> (*b*)(*i*) Where the vakalatnama is executed in the presence of the Advocate-on-Record, he shall certify that it was executed in his presence.

(*ii*) Where the Advocate-on-Record merely accepts the vakalatnama which is already duly executed in the presence of a Notary or an advocate, he shall make an endorsement thereon that he has satisfied himself about the due execution of the vakalatnama.

(*c*) No advocate other than an advocate-on-record shall be entitled to file an appearance or act for a party in the Court.

(*d*) Every advocate-on-record shall keep such books of account as may be necessary to show and distinguish in connection with his practice as an advocate-on-record—

(*i*) moneys received from or on account of and the moneys paid to or on account of each of his clients; and

(*ii*) the moneys received and the moneys paid on his own account.

(*e*) Every advocate-on-record shall, before taxation of the Bill of Costs, file with the Taxing Officer a certificate showing the amount of fee paid to him or agreed to be paid to him by his client.

10. When, on the complaint of any person or otherwise, the Court is of the opinion that an advocate-on-record has been guilty of misconduct or of conduct unbecoming of an advocate-on-record, the Court may make an order removing his name from the register of advocates on record either permanently or for such period as the Court may think fit and the Registrar shall thereupon report the said fact to the Bar Council of India and to State Bar Council concerned:

Provided that the Court shall, before making such order, issue to such advocate-on-record a summons returnable before the Court or before a Special Bench to be constituted by the Chief Justice, requiring the advocate-on-record to show cause against the matters alleged in the summons, and the summons shall, if practicable, be served personally upon him with copies of any affidavit or statement before the Court at the time of the issue of the summons.

> ***Explanation.*—For the purpose of these rules, misconduct or conduct unbecoming of an advocate-on-record shall include—**
>
> **(*a*) mere name lending by an advocate-on-record without any further participation in the proceedings of the case;**
>
> (*b*) absence of the advocate-on-record from the Court without any justifiable cause when the case is taken up for hearing; and
>
> (*c*) failure to submit appearance slip duly signed by the advocate-on-record of actual appearances in the Court."
>
> (emphasis added)

20. An occasion for an advocate-on-record to file a memorandum of appearance accompanied by a vakalatnama, arises when he files a case in this Court or when he appears for a respondent or opponent in any case. If a vakalatnama is not duly executed before the advocate-on-record but executed in the presence of a notary or another advocate, the advocate-on-record must, before filing the vakalatnama, make an endorsement thereon that he has satisfied himself about the due execution of the vakalatnama. Therefore, if someone else hands over the vakalatnama to an advocate-on-record, the requirement of making an endorsement, as provided in clause (a)(ii) of Rule 7, is mandatory. This endorsement cannot be made blindly but must be based on due verification and confirmation. This responsibility is put on the advocates-on-record to uphold the integrity of the process.

21. Clauses (b) and (c) of the Explanation to Rule 10 have not been brought into force as yet, but clause (a) of the Explanation has been brought into force. It clearly prohibits advocates-on-record from merely lending their name without any further participation in the proceedings of the case. Thus, if an advocate-on-record indulges in name lending, it amounts to misconduct or conduct unbecoming of an advocate-on-record. The prohibition on name lending is not confined to the period after the filing of a case or the post-filing of an appearance for a party; it is applicable even before the case is actually filed. We have elaborated upon it in the subsequent part of this judgment.

22. This Court is the final Court in our country. For the purposes of maintaining the sanctity of this Court and for ensuring that cases are properly conducted, only advocates-on-record are entitled to file a case or a vakalatnama for a party. As provided in Rule 5 of Order IV, an advocate qualifies to register himself as an advocate-on-record, provided firstly, that his name appears in the role of any State Bar Council for a minimum of four years. Secondly, he has to undergo training for one year with an advocate-on-record approved by this Court. Thirdly, he has to pass an examination conducted by this Court. Considering the unique position of advocates-on-record and what is provided in Rule 10, an advocate-on-record of this Court is bound to maintain a much higher standard of professional conduct than any other advocate. It is only through an advocate-on-record that a litigant can seek justice from this Court unless he wants to appear in person. Therefore, the role of an advocate-on-record is very crucial. Unless he maintains a high standard of conduct, he will be of no assistance to this Court.

23. As highlighted by Dr S Muralidhar, the learned senior advocate, it is true that in day-to-day practice, advocates-on-record get petitions/appeals/counter-affidavits drafted by some other advocates appearing in the cases either before the Trial Court or High Court. Sometimes, they receive case papers and a vakalatnama for filing petitions/appeals/counter-affidavits through an advocate practising at a trial court or High Court or from a litigant. Therefore, in such cases, the advocate-on-record may not necessarily meet his client. Even when a petition/appeal/counter-affidavit is not drafted by the advocate-on-record, the advocate-on-record who files it is entirely and wholly responsible to this Court. Therefore, when an advocate-on-record receives a draft of a petition/appeal/counter-affidavits from any other advocate, it is his duty to go through the case papers and, thereafter, to carefully go through the petition/appeal/counter-affidavits to ascertain whether correct facts have been stated in the draft and whether all relevant documents are annexed to the petition/appeal/counter-affidavits. After reading the case papers, if he has any doubt, he must get the doubt clarified either by contacting the client or his local advocate. He is responsible for ensuring that he gets correct factual instructions so that there is no suppression of facts while filing petitions/appeals/counter-affidavits. An advocate-on-record is answerable to this Court since he has a unique position under the

2013 Rules. Therefore, when incorrect facts are stated in the petition/appeal/counter-affidavits or when material facts or documents are suppressed, the advocate-on-record cannot shift the entire blame on either the client or his instructing advocates. Therefore, it is his duty to be cautious and careful. His duty is to file proper petitions/appeals and affidavits before this Court to assist the court in dispensing justice. He must always be fair to the Court and effectively assist the Court in deciding cases. The duty of the advocate-on-record does not end after filing a case or a counter. Even if the counsel appointed by him is not present, he must be ready with the case on law and facts and effectively assist the Court.

24. If advocates-on-record start merely lending their names to petitions/appeals/counter-affidavits drafted by somebody else, the very purpose of setting up the institution of advocates-on-record will be frustrated. An advocate-on-record has an onerous burden to discharge, as seen from Order IV of the 2013 Rules. Under Rule 17 of Order IV, no advocate-on-record can withdraw from the conduct of a case by reason of only non-payment of professional fees by his client, unless this Court grants leave. As per Rule 21, he is liable to this Court for the due payment of all fees and charges payable to this Court. Therefore, as we have held earlier, the standard of conduct of an advocate-on-record always ought to be higher than the conduct of any other advocate who is not an advocate-on-record. Every advocate-on-record must render effective service so that a common man can access remedies before this Court.

25. We may note here that if advocates-on-record start behaving irresponsibly and start merely lending their names while filing petitions/appeals/counter-affidavits, it may have a direct impact on the quality of justice rendered by this Court. Therefore, in case any advocate-on-record commits misconduct or is guilty of conduct unbecoming of an advocate-on-record, strict action is contemplated against him as per Rule 10 of Order IV. In the present case, Shri Jaydip Pati's conduct may attract Rule 10 of Order IV. However, in the peculiar facts and circumstances before us, we are not invoking Rule 10 for the following reasons. Firstly, he has tendered an unconditional apology. Secondly, now he has learnt a lesson. Thirdly, the responsibility of suppressing facts and making false statements has been accepted by Shri Rishi Malhotra, senior advocate.

CONDUCT OF THE SENIOR ADVOCATE

26. Now, we come to the issue of the conduct of Shri Rishi Malhotra, senior advocate. In this very appeal, we have noted that through a reported judgment of this Court, the sentence of the appellant for a fixed term of thirty years without remission was restored. It was neither disclosed in the SLP nor disclosed by the learned senior advocate at the time of issuing notice and grant of interim relief that, in view of the decision of this Court, the grant of remission to the appellant was out of question.

27. In the order dated 1st October 2024 passed by this Court in Writ Petition (Crl.) No.631 of 2023 filed by the said senior advocate as an advocate-on-record, a blatantly false statement was made in the synopsis as well as in the body of the petition that petitioner nos. 4 and 6 were convicted for the offence punishable under Section 302 of the IPC. The order records that the advocate tendered an apology. By accepting the apology, the petition as regards the said two petitioners was dismissed as withdrawn. The same order indicates that in SLP (C) @ D.No.4464 of 2024 filed by the same advocate, incorrect statements were made, and therefore, the unconditional apology tendered by him was accepted by this Court. The order also records that in SLP (Crl.) No.1775 of 2024, while passing an interim order dated 9th February 2024, a factual aspect was suppressed by the same advocate. The same order further records that in Writ Petition (Crl.) No.195 of 2024 filed by that very advocate, there were incorrect statements made on facts and therefore, the petition was permitted to be withdrawn.

28. The same advocate appeared in Writ Petition (Crl.) No.418 of 2024 (Meera Devi v. State (Govt. of NCT of Delhi)). The order dated 29th November 2024 passed in the said petition records that when this Court passed the order on 21st October 2024, issuing notice and granted time to the petitioner therein to surrender, it was not brought to the notice of this Court that on 16th October 2024 in a petition filed by the same petitioner, the High Court had granted time of two weeks to her to surrender, without any interim relief.

29. In the order dated 18th November 2024 passed by this Court in SLP (Crl.) Nos.1484-1496 of 2024, it is observed that in the petition originally filed by the same advocate, another advocate appeared for petitioner no.13 and stated that the signature of petitioner no.13 was

obtained on the SLP without even informing him about the contents of the petition. Further, an order dated 3rd January 2025 passed in the said petition records that petitioner no.13 therein filed an affidavit stating that he was misled and was not informed about the exact challenge made in the petition.

30. We make it clear that we are not recording any final finding against Shri Rishi Malhotra, senior advocate, on the question whether his designation can be withdrawn. We leave it to the Hon'ble Chief Justice of India to take a call on this issue. What we have reproduced above is borne out from the record. Shri Rishi Malhotra was designated as a senior advocate on 14th August 2024. The conduct of the advocate reflected from the orders of this Court passed in this very appeal, and other cases where the advocate appeared raises an important question of whether the decisions of this Court in the case of ***Indira Jaising-I***[1] and ***Indira Jaising-II***[2], which lay down the guidelines for designation of senior advocates by this Court and High Courts across the country under the 1961 Act, need reconsideration. A question also arises as to whether the system set up under the said decisions has really worked effectively. A serious introspection is required to answer the question of whether the Rules framed in terms of the said decisions have ensured that only deserving advocates are being designated.

Guidelines for designation of advocates as senior advocates in accordance with the Advocates Act, 1961

31. Section 16 of the 1961 Act reads thus:

> **"16. Senior and other advocates**.—(1) There shall be two classes of advocates, namely, senior advocates and other advocates.
>
> (2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, [standing at the Bar or special knowledge or experience in law] he is deserving of such distinction.
>
> (3) Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interests of the legal profession, prescribe.

> (4) An advocate of the Supreme Court who was a senior advocate of that Court immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate:
>
> Provided that where any such senior advocate makes an application before the 31st December 1965 to the Bar Council maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly."

In sub-section (2) of Section 16, the words "standing at the Bar or special knowledge or experience in law" were incorporated by way of an amendment with effect from 31st January 1974 in place of the words "experience and standing at the Bar". Therefore, as Section 16 stands today, an advocate can be designated as a senior advocate if:-

a) He consents to such designation; and

b) The Supreme Court or a High Court is of the opinion that by virtue of his ability, standing at the Bar, or special knowledge or experience in law, he is deserving of such distinction.

Prior to 31st January 1974, an advocate could be designated as a senior advocate if, in the opinion of the Supreme Court or the High Court, by virtue of his ability, experience and standing at the Bar, he deserved such designation. Thus, before the amendment, the criteria was of an advocate having ability, experience and standing at the Bar. Earlier, experience was also an essential criterion. It was done away with by an amendment with effect from 31st January 1974.

32. It is pertinent to note that sub-section (2) of Section 16 does not contemplate any application being made by any advocate for seeking designation as a senior advocate. From the scheme of sub-section (2) of Section 16, it is apparent that the designation as a senior advocate is to be conferred by the Supreme Court or a High Court on an advocate with his consent. The question is whether a person can seek something which has to be conferred.

33. In ***Indira Jaising-I***[1], this Court dealt with the challenge in a petition under Article 32 of the Constitution of India, *inter alia*, to the system of designation of senior advocates followed by various High Courts, including the method of secret ballot. This Court considered the

practices followed in various other nations and various High Courts in India. Thereafter, this Court proceeded to lay down mandatory guidelines which would cover the exercise of designation of senior advocates by this Court and all the High Courts. A direction was given to modify the norms/guidelines in existence so as to be in accord with the directions. Paragraphs 73 and 74 of the said decision read thus:

> **"73.** It is in the above backdrop that we proceed to venture into the exercise and lay down the following norms/ guidelines which henceforth would govern the exercise of designation of Senior Advocates by the Supreme Court and all High Courts in the country. The norms/guidelines, in existence, shall be suitably modified so as to be in accord with the present.
>
> **73.1.** All matters relating to designation of Senior Advocates in the Supreme Court of India and in all the High Courts of the country shall be dealt with by a Permanent Committee to be known as "Committee for Designation of Senior Advocates";
>
> **73.2.** The Permanent Committee will be headed by the Hon›ble the Chief Justice of India and consist of two seniormost Judges of the Supreme Court of India [or High Court(s), as may be]; the learned Attorney General for India (Advocate General of the State in case of a High Court) will be a Member of the Permanent Committee. The above four Members of the Permanent Committee will nominate another Member of the Bar to be the fifth Member of the Permanent Committee;
>
> **73.3**. The said Committee shall have a permanent Secretariat, the composition of which will be decided by the Chief Justice of India or the Chief Justices of the High Courts, as may be, in consultation with the other Members of the Permanent Committee;
>
> **73.4.** All applications including written proposals by the Hon›ble Judges will be submitted to the Secretariat. On receipt of such applications or proposals from Hon›ble Judges, the Secretariat will compile the relevant data and information with regard to the reputation, conduct, integrity of the advocate(s) concerned including his/her

participation in pro bono work; reported judgments in which the advocate(s) concerned had appeared; the number of such judgments for the last five years. The source(s) from which information/data will be sought and collected by the Secretariat will be as decided by the Permanent Committee;

73.5. The Secretariat will publish the proposal of designation of a particular advocate in the official website of the Court concerned inviting the suggestions/views of other stakeholders in the proposed designation;

73.6. After the database in terms of the above is compiled and all such information as may be specifically directed by the Permanent Committee to be obtained in respect of any particular candidate is collected, the Secretariat shall put up the case before the Permanent Committee for scrutiny;

73.7. The Permanent Committee will examine each case in the light of the data provided by the Secretariat of the Permanent Committee; interview the advocate concerned; and make its overall assessment on the basis of a point-based format indicated below:

Sl. No.	*Matter*	Points
1.	Number of years of practise of the applicant advocate from the date of enrolment. [10 points for 10-20 years of practise; 20 points for practise beyond 20 years]	20 points
2	Judgments (reported and unreported) which indicate the legal formulations advanced by the advocate concerned in the course of the proceedings of the case; pro bono work done by the advocate concerned; domain expertise of the applicant advocate in various branches of law, such as Constitutional law, Inter-State Water Disputes, Criminal law, Arbitration law, Corporate law, Family law, Human Rights, Public Interest Litigation, International law, law relating to women, etc.	40 points (later on 50 points)

3.	**Publications by the applicant advocate**	**15 points (later on 5 points)**
4.	**Test of personality and suitability on the basis of interview/interaction**	**25 points**

73.8. All the names that are listed before the Permanent Committee/cleared by the Permanent Committee will go to the Full Court.

73.9. Voting by secret ballot will not normally be resorted to by the Full Court except when unavoidable. In the event of resort to secret ballot, decisions will be carried by a majority of the Judges who have chosen to exercise their preference/choice.

73.10. All cases that have not been favourably considered by the Full Court may be reviewed/reconsidered after expiry of a period of two years following the manner indicated above as if the proposal is being considered afresh;

73.11. In the event a Senior Advocate is guilty of conduct which according to the Full Court disentitles the Senior Advocate concerned to continue to be worthy of the designation, the Full Court may review its decision to designate the person concerned and recall the same.

74. We are not oblivious of the fact that the guidelines enumerated above may not be exhaustive of the matter and may require reconsideration by suitable additions/ deletions in the light of the experience to be gained over a period of time. This is a course of action that we leave open for consideration by this Court at such point of time that the same becomes necessary."

(emphasis added)

34. In ***Indira Jaising-II***[2], this Court reconsidered some of the directions issued in ***Indira Jaising-I***[1]. This Court considered the issues of voting by secret ballot, cut-off marks, and points assigned for publication.

(Criteria under Sr. No.3 of the tabular format incorporated in paragraph 73.7 of ***Indira Jaising-I***[1]). This Court also considered the aspect of personal interview and other general aspects. This Court modified Sr. No.3 in paragraph no. 73.7 by reducing the marks for publication from 15 to 5.

35. A conjoint reading of paragraph nos. 73.7 and 73.8 in the case of ***Indira Jaising-I***[1] will show that the job of the Permanent Committee is to make an overall assessment on the basis of a points-based format. It is not open for the Permanent Committee to make assessments in any other manner. The guidelines incorporated in paragraph 73 do not confer power on the Permanent Committee to make recommendations. The job of the Permanent Committee ends by making an overall assessment by assigning points to each candidate. However, the Permanent Committee is mandated to consider the case of each and every eligible applicant who has filed a valid application. Paragraph 73.8 indicates that all names placed before the Permanent Committee should be placed before the Full Court. It follows that the overall assessment made on the basis of a points-based format must be placed before the Full Court, and it is ultimately the prerogative of the Full Court to take a final decision on the designation. It is evident that as the decision to designate or not to designate vests in the Full Court of this Court and the High Courts, the Full Court is not bound by the assessment made by the Permanent Committee. However, considering the status of the Permanent Committee, the Full Court is obviously bound to take into consideration the overall assessment made of every candidate by the Permanent Committee on the basis of a points based format.

36. The mandatory guidelines have been laid down by this Court in the case of ***Indira Jaising-I***[1] in the exercise of powers under Article 142 of the Constitution of India. However, paragraph 74 of the decision indicates that this Court was of the view that the guidelines may require reconsideration in the light of the experience to be gained over a period of time. Even the decision in the case of ***Indira Jaising-II***[2] in paragraph 51 records that the process of improvement of the guidelines is a continuous one, as we learn from every experience. We are conscious of the fact that both the decisions in the case of ***Indira Jaising*** are by a Bench of three Hon'ble Judges and we are respectfully bound by the said decisions.

37. A Constitution Bench in the case of ***Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.***[5] in paragraph no.12 held thus:

> **"12.** Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:
>
> (*1*) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.
>
> (*2*) Para 12(2) corrected vide Official Corrigendum No. F.3/Ed.B.J./21/2005 dated 3-3-2005.] **A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration.** It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.
>
> (*3*) Para 12(3) corrected vide Official Corrigendum No. F.3/Ed.B.J./7/2005 dated 17-1-2005.] The above rules are subject to two exceptions: (*i*) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (*ii*) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and

5 (2005) 2 SCC 673

> that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh* [(1989) 2 SCC 754] and *Hansoli Devi* [(2002) 7 SCC 273]."

This judgment has been recently affirmed by a Bench of seven Hon'ble Judges of this Court in the case of ***Aligarh Muslim University v. Naresh Agarwal & Ors.***[6]

38. The learned Solicitor General of India made a fervent plea that the decisions in the case of ***Indira Jaising*** need reconsideration on several grounds stated by him. The other learned advocates, including Dr. S. Murlidhar, a senior advocate appointed as *amicus curiae*, have echoed the submissions of the learned Solicitor General. Ms Indira Jaising, learned senior advocate, however, expresses strong reservations at the prayer made by the learned Solicitor General. Her submission is that this Bench cannot go into the correctness of the earlier decisions as this Court is bound by the said decisions. Moreover, she urged that the learned Solicitor General has no *locus* to make submissions.

39. SCAORA also submitted its suggestions on all aspects. SCAORA expressed a view that both the decisions in the case of ***Indira Jaising*** have democratised and streamlined the process of senior designation. Their contention is that the system created by the judgments is successful, but some tweaking in the working and mechanism may be required. They have suggested that the Permanent Committee for the Supreme Court should have representation from both the SCAORA and Supreme Court Bar Association. Moreover, there should be a system to communicate the marks/points assigned by the Permanent Committee to the candidates.

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NEED TO RECONSIDER BOTH THE DECISIONS IN INDIRA JAISINGH'S CASE

40. Neither can we disagree with the two binding decisions nor can we take a contrary view. However, all that we are doing is expressing a few serious doubts and concerns. We propose to direct that this issue be placed before the Hon'ble Chief Justice of India to consider whether the issue needs to be reconsidered by a Bench of appropriate strength. This exercise will be within the four corners of what is held by the Constitution Bench in the case of the ***Central Board of Dawoodi Bohra Community and Anr.***[5] There is one more reason why we are undertaking this exercise. Both the decisions lay down that making such modifications and improvements will be a continuous exercise. For the reasons we have recorded hereafter, our views need to be placed before the Hon'ble Chief Justice of India to enable him to consider whether the issues decided in the two decisions in the case of ***Indira Jaising*** need reconsideration by a larger Bench.

41. We need not go into the issue of the *locus* of the learned Solicitor General as we cannot decide whether the earlier decisions are right or wrong. Looking at the case of an advocate who has been designated recently, which we have discussed in detail, there is nothing wrong if, as an officer of this Court, the learned Solicitor General raises a few questions.

42. The role of a designated senior advocate in our legal system is of considerable importance. Those who are designated senior advocates have a different status and high standing in the legal system. Therefore, it is imperative that only those advocates who deserve the designation in terms of sub-section (2) of Section 16 should be conferred designation. If undeserving candidates are designated as senior advocates, it affects the prestige and dignity of the institution of the judiciary, as it is the privilege of the High Courts and this Court to grant such designation. Therefore, it is imperative that the best possible system should be devised for the process to be undertaken in terms of sub-section (2) of Section 16. Ultimately, the endeavour of all stakeholders must be that we should have a system in which only deserving advocates get the designation.

43. We are recording our concerns based on submissions made across the Bar. We again reiterate that we mean no disrespect to the two

binding decisions, and we are recording our concerns only to enable the Hon'ble Chief Justice of India, to decide whether the doubts expressed by us need consideration by an appropriate larger Bench. We flag our concerns as follows:

a) As can be seen from sub-section (2) of Section 16, *prima facie,* the scheme of the provision is that no advocate can seek designation, but the privilege of designation has to be conferred by this Court or High Courts with his consent. In paragraph 2 of ***Indira Jaising-II***[2], this Court held that designation as a senior advocate in India is a privilege awarded as a mark of excellence to advocates who have distinguished themselves and have made a significant contribution to the development of the legal profession. Therefore, the question that needs serious consideration is whether the Court should permit applications to be made for grant of designation, though the statute does not contemplate that. If the legislature intended to allow advocates to make applications for designation, sub-section (2) of Section 16 would not have provided for this Court or High Courts to take the consent of advocates before designation.

b) Paragraph 73.7 provides for an advocate who has applied for designation to appear before the Permanent Committee for an interview/interaction to test his personality and suitability. If an advocate, by virtue of his standing at the Bar, his ability or special knowledge, deserves designation as a senior advocate, the question which arises is, by making such an advocate appear for an interview, are we not compromising on the dignity of the advocate? Are we not converting the process of designation into a selection process?

c) It is doubtful whether by interviewing a candidate for a few minutes, his personality or suitability can be really tested. 25 points out of 100 are assigned for interview/interaction, constituting 1/4th of the total points.

d) As recorded in paragraph 73.7, the duty of the Permanent Committee is to make its overall assessment of the advocate concerned based on a points-based formula. No other method of making an overall assessment has been provided. No one can dispute that an advocate who lacks integrity or does not

possess a quality of fairness is disentitled to designation. The reason is simple as such an advocate cannot be held to have any standing at the Bar. Moreover, there may be complaints pending against an advocate with the disciplinary committee of the Bar Councils. The question is how the cases of such advocates can be considered by the Permanent Committee. Even if members of the Permanent Committee know that the applicant advocate lacks integrity, is not fair, does not act as an officer of the Court, or against whom complaints are pending for professional misconduct, there is no scope to reduce the points on that count. If such an advocate excels at the time of the interview or otherwise renders excellent performance, he cannot be given lesser marks because the candidate lacks integrity, character or fairness. The reason is that 25 marks are to be assigned not based on his performance before the Court or his general reputation but on his performance during the interview/interaction.

e) As noted earlier, prior to 31st January 1974, the criteria in sub-section (2) of Section 16 was based on ability, experience and standing at the Bar. That was substituted with effect from 31st January 1974. After the amendment, mere experience in terms of the number of years of practice cannot be relevant. However, "experience in law" needs consideration. Thus, mere experience in terms of number of years of practice is not sufficient. Our concern is whether 10 or 20 points should be mechanically assigned only based on experience or the number of years of practice. It is worth considering whether only the number of years put in practice has any nexus with 'standing' within the meaning of Section 16(2). Further, it is pertinent to note that Sr. No.1 in paragraph 73.7 merely discusses the number of years of practice. The criteria adopted is not of actual years of active practice. Therefore, an advocate who has not been in active practice for 20 years or more will still get 20 marks because his registration as an advocate has been for more than 20 years.

f) It is a usual experience that applicants submit many judgments in which they have appeared and submit copies of books and many articles written by them. The five members of the Permanent

Committee are expected to go through every judgment submitted by the candidate to assign 50 marks. To assign marks for publications, they are expected to go through many articles and books. Whether three senior judges, including the Chief Justice and two senior advocates, should spend hours together for one candidate is a question that needs serious consideration.

g) It is true that the overall assessment made by the Permanent Committee in terms of points is placed before the Full Court. The decision of the Full Court may not necessarily be based on the points assigned by the Permanent Committee. Still, the Full Court cannot altogether ignore the assessment made by the Permanent Committee. When the points-based assessment is not free from defects, the question is whether it can form the basis of assessment of an advocate.

h) Another issue is about the prohibition of secret ballot. The Judges consider the applications in Full Court. The question arises as to whether the Judges should openly discuss the merits and demerits of those who appear before them on the judicial side. Therefore, the issue of permitting voting by secret ballot needs serious reconsideration.

i) There is one more serious area of concern. Whether the guidelines give sufficient opportunity to the advocates practising in our Trial Courts to get designated. There cannot be any dispute that we have very eminent lawyers practising exclusively before our Trial Courts who have the ability, standing and experience in law. They are outstanding public prosecutors and defence lawyers**.** In most cases, their arguments may not always have legal formulations, as reflected in the judgments in cases wherein they appear. The submissions will necessarily be based on facts. They will not have reported judgments to their credit. Such advocates do not stand to gain sufficient points against Sr. No. 2 in paragraph 73.7. We are of the view that designation under sub-section (2) of Section 16 cannot be the monopoly of the advocates practising in higher Constitutional Courts like this Court and the High Courts. Chapter 6, in part VI of the Constitution of India, in a sense, gives the status of Constitutional Courts to our trial and district courts.

CONCLUSIONS

44. We, therefore, hold as under:

(i) When a petition/appeal is not drafted by the advocate-on-record, the advocate-on-record who files it is entirely and wholly responsible to this Court. Therefore, when an advocate-on-record receives a draft of a petition appeal/counter-affidavit from any other advocate, it is his duty to go through the case papers and, thereafter, to carefully go through the petition/appeal/counter-affidavit to ascertain whether correct facts have been stated in the draft and whether all relevant documents are annexed to the petition/appeal/counter-affidavit. After reading the case papers, if he has any doubt, he must get the doubt clarified either by contacting the client or his local advocate. He is responsible for ensuring that he gets correct factual instructions so that there is no suppression of facts while filing petitions/appeals/counter-affidavits. An advocate-on-record is answerable to this Court since he has a unique position under the 2013 Rules. Therefore, when incorrect facts are stated in the petition/appeal/counter-affidavit or when material facts or documents are suppressed, the advocate-on-record cannot shift the entire blame on either the client or his instructing advocates. Therefore, it is his duty to be cautious and careful. His duty is to file proper proceedings and affidavits before this Court to assist the court in dispensing justice. He must always be fair to the Court and effectively assist the Court in deciding cases. The duty of the advocate-on-record does not end after filing a case or a counter. Even if the counsel appointed by him is not present, he must be ready with the case on law and facts and effectively assist the Court;

(ii) It is the obligation of the advocates on record not to merely lend their names to petitions/appeals drafted by somebody else. If they do that, the very purpose of making a provision for setting up the institution of advocates-on-record will be frustrated.

(iii) If advocates-on-record start behaving irresponsibly and start merely lending their names while filing petitions/appeals/counter-affidavits, it may directly impact the quality of justice rendered by this Court. Therefore, if any advocate-on-record

commits misconduct or is guilty of conduct unbecoming of an advocate-on-record, an action against him as per Rule 10 of Order IV is warranted.

(iv) Regarding the designation of Shri Rishi Malhotra, we leave it to the Hon'ble Chief Justice of India to take a call.

45. Considering what we have observed in paragraph no. 43 above, we direct the Registrar (Judicial) to place a copy of this judgment before Hon'ble the Chief Justice of India. It is for the Hon'ble Chief Justice of India, to consider whether the issues flagged by us deserve to be considered by a Bench of appropriate strength.

46. We record our appreciation for the assistance rendered by Dr. S. Murlidhar, senior advocate, the learned Solicitor General of India, Ms. Indira Jaising, senior advocate and the office bearers of SCAORA.

47. The office bearers of SCAORA have come forward with various suggestions. The suggestions are regarding the conduct of the examination for advocates-on-record. There are suggestions made for adopting a consistent approach regarding notifying the deficiencies and objections in the cases filed. They want bottlenecks to be cleared in filing the registration and verification of cases which may result in early listing of cases. Their contentions are that there is no written handbook available containing instructions regarding the process of checking and verifying newly filed cases. The norms and criteria keep on changing at the whims and fancies of the Registry officials. Therefore, the suggestion of the Association is that the Secretary-General or Registrars should regularly organise Open Houses in which healthy discussions can take place on the processes adopted by the Registry. Perhaps this suggestion is welcome as there can be a constructive dialogue between the Association and the Registry for the purposes of clearing bottlenecks and ensuring early listing of all cases. We direct the Registrar (Judicial) to forward a copy of this judgment to the Secretary General of the Court with a direction to forward the written submissions made to him so that necessary remedial steps/action can be taken by him. We are sure that the members of the Registry will regularly interact with the office bearers of SCAORA and sort out the issues raised by the Association.

48. No order is required to be passed on merits of the case of the appellant for grant of premature release. His remedies are kept open.

49. This appeal is disposed of on the above terms. Pending applications in the appeal, except IA No.259649 of 2024 which is de-tagged vide order dated 20th January 2025, stand disposed of.

WRIT PETITION (CRL.) NO.418 OF 2024

50. Writ Petition (Crl.) No.418 of 2024 is de-tagged and is not to be treated as part-heard.

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Himanshu Rai, Hony. Associate Editor
(*Verified by:* Abhinav Mukerji, Sr. Adv.)